

## BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p><b>Mosby Irrigation Company</b></p> <p><b>Attn: Martin Huber</b></p> <p><b>RESPONDENT</b></p>	<p><b>MEASURING DEVICE AND CONTROL STRUCTURE NOTICE</b></p> <p>SEAA No. 1348 DISTRIBUTION ACCOUNT: 100593 WATER RIGHTS: 45-515, 522, 523, 524, 905, 906, 5246, 5284 et al.</p>
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## I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

*(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:*

- (a) each location where water is diverted from a source; and*
- (b) any other location required by the state engineer.*

*(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*

*(3) The state engineer shall approve the design of:*

- (a) the measuring device; and*
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*

*(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*

## II. STATEMENT OF FACTS

SCANNED

1. The Respondent diverts water from Mosby Creek under water rights owned by the Mosby Irrigation Company.
2. The Respondent owns and is responsible for the water measuring devices and control gates at Julius Park Reservoir and Red Wash Reservoir, which are necessary to the operation of the Deep Creek Distribution System.
3. There are a few items that need attention in order for the system to operate properly and efficiently based on an inspection of the Respondent's facilities as follows:
4. The release gate at Julius Park Reservoir was not locked with key access to the commissioner.
5. The release gate at Red Wash Reservoir was not locked with key access to the commissioner.
6. The release outflow at Red Wash Reservoir is not measurable.
7. There is no bridge or vehicle stream crossing below Red Wash Dam to enable vehicle access to the canal diversion structure on Deep Creek from Red Wash Dam.
8. The staff gage at the Julius Park Parshall flume is corroded and needs replacement.
9. There is some minor erosion and/or flow interference on the upstream side of the Julius Park Parshall flume that reduces the accuracy of this measurement.
10. There are some questions regarding which measuring devices are not functioning that are needed to distinguish between Mosby Irrigation Company water and Deep Creek water. There are other flumes, such as Donahoe and Logger's Cabin or others, that are not well maintained and their value and purpose in the operation of the distribution system is not well documented that we are aware of.
11. There are concerns relating to the quantity of Dry Fork water delivered into the Mosby Canal and how this is regulated to prevent the canal from spilling.
12. The 18-inch Parshall flume at the Lance Luck west side diversion located near the point North 90 ft and East 584 ft from the S4 Corner of Section 17, Township 3 South, Range 19 E, Salt Lake Base and Meridian, is not measuring correctly due to sediments within the flume. There is another small flume located near the point South 682 ft West 371 ft from the NE Corner of section 18, T 3S Range 19 E Salt Lake Base and Meridian, that also delivers to Lance Luck and is in need of repair.

### III. ACTIONS REQUIRED

1. Red Wash Reservoir must have a measuring device installed to measure the reservoir releases.
2. The release control gates on both Julius Park and Red Wash reservoirs must have locks installed to enable the commissioner to lock these gates so they are not changed without his knowledge in order to control, measure, and report the outflow releases.
3. A measuring device must be installed below Red Wash Reservoir to enable the commissioner to measure and report reservoir releases.

4. A bridge or stream crossing for vehicles should be constructed below Red Wash Dam in order for the commissioner and operators to access the reservoir diversion structure from the reservoir access road.
5. The Julius Park Parshall Flume must have a new staff gage installed to replace the existing corroded gage. This should be installed at the same elevation and location as the existing staff gage.
6. The Julius Park Parshall Flume must have upstream rounded wing-walls installed to help reduce flume sidewall interference and provide a smooth water flow transition into the flume associated with the abrupt change in the channel geometry with the narrow rectangular flume in a wide trapezoidal channel. This is often accomplished with vertical steel or concrete wing wall "retaining walls" extending outward upstream from each side of the flume with a fixed radius of curvature sufficient so the curved walls meet the edges of the upstream channel perpendicular to the channel bank when the canal and flume are flowing full. The top of the wall should be as high or slightly higher than the top of the upstream end of the Parshall flume. Constructing the wing-walls will enable the flow measurement to be more stable and accurate. It is also recommended that the Respondent clean cobbles from the bottom of the channel within this short distance upstream from the flume to help reduce interference.
7. For reference and consideration with a new commissioner being trained, the Respondent must also submit written documentation of how the Mosby Water and Deep Creek water are to be distinguished from each other in the operation of the distribution system in order to help determine what other measuring devices are to be maintained in the future.
8. The Respondent must submit their plan for how the Mosby Canal capacity will not be exceeded with excess diversion from Dry Fork. This will help to clarify the Respondent's responsibility to regulate this diversion when needed during times of high flow.
9. The Respondent must maintain or have the water users maintain the many individual diversion structures and measuring devices used by the commissioner to deliver Mosby water to shareholders. Diversions that need cleaning and/or maintenance as per the latest inspection include the two Lance Luck flumes repaired and cleaned to work properly.
10. The work must be completed and documentation submitted before May 1, 2010.

#### IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.

2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation of an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation."

#### V. FURTHER INFORMATION


If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert Leake  
*Regional Engineer*  
*Vernal Office/Eastern Region*  
*Utah Division of Water Rights*  
*(435) 781-5327*

Ben Anderson  
*Water Rights Distribution Engineer*  
*Utah Division of Water Rights*  
*(801) 538-7469*

*1594 W North Temple Ste 220*  
*P.O. Box 166300*  
*Salt Lake City, UT 84104-6300*

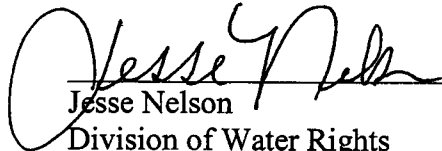
Dated this 30th day of September, 2009

  
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Ben L. Anderson, P.E.  
Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 30th day of September, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Mosby Irrigation Company  
Attn: Martin Huber  
P O Box 453  
Lapoint, UT 84039**

  
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Jesse Nelson  
Division of Water Rights  
Field Services Secretary

cc: Robert Leake, Regional Engineer  
Kristopher Blanchard, Water Commissioner

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